

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF)
 DELMARVA POWER & LIGHT COMPANY)
 FOR CONFIDENTIAL TREATMENT OF)
 INFORMATION REGARDING THE FREEDOM)
 OF INFORMATION ACT (“FOIA”) REQUEST) PSC DOCKET NO. 21-0149
 FROM MR. JOHN NICHOLS CONCERNING)
 PSC DOCKET NO. 20-0757)
 (FILED MARCH 1, 2021))

ORDER NO. 9765
AMENDING ORDER NO. 9755

AND NOW, this 31st day of March 2021, the Delaware Public Service Commission (“Commission”) determines and orders the following:

WHEREAS, on November 16, 2020, Delmarva Power & Light Company (“Delmarva” or the “Company”) filed a letter and accompanying exhibits regarding “Delmarva Power’s monthly computation of the Service Classification QFCP-RC charges, including current factors and reconciliation factors as required in Order No. 8136, dated April 17, 2012 in Docket 11-362 and outlined in Tariff Leaf No. 74d.” (the “Filing”); and

WHEREAS, the Filing was assigned Docket No. 20-0757; and

WHEREAS, the Filing included two exhibits (“Exhibits 2 and 3”) that were filed with the Commission via DelaFile with “Confidential” Security Levels and submitted via email to Commission Staff (“Staff”) with confidential designations; and

WHEREAS, on or about January 18, 2021, the Commission’s Freedom of Information Act (“FOIA”) Coordinator sent a letter to Delmarva regarding “John Nichols’ January 14, 2021 FOIA Request regarding PSC Docket No. 20-0757; Delmarva Power Qualified Fuel Cell Provider Project Tariffs” (the “FOIA Letter”); and

WHEREAS, the FOIA Letter noted that Mr. Nichols requested “unredacted copies of exhibits 2 and 3 in PSC Docket No. 20-0757 marked as ‘Documents to be used by Staff for review of filing’ (the ‘Requested Documents’)”; and

WHEREAS, the FOIA Letter further stated that “Delmarva is required to ‘[a]dvise the Commission in writing whether it opposes the disclosure of the [Requested Documents]. If the Commission is not so notified, it will produce the [Requested Documents].’ (8 *Del. Admin. C.* § 1202-6.2.2). If Delmarva opposes disclosure, Delmarva is required to ‘[p]rovide in writing, at the time of notifying the Commission of its objection, information sufficient to justify a claim of confidentiality under FOIA. Such information shall include, but not be limited to,’ the terms set forth in subsections 6.2.3.1–6.2.3.3. (8 *Del. Admin. C.* § 1202-6.2.3). (See 8 *Del. Admin. C.* § 1202-6.0, *et seq.*)”; and

WHEREAS, on February 1, 2021, Delmarva provided the FOIA Coordinator with a response to the FOIA Letter (the “FOIA Response”); and

WHEREAS, on March 1, 2021, in furtherance of its FOIA Response, Delmarva filed the above-captioned petition (“Petition”) requesting that certain confidential information remain exempt from disclosure under Delaware law pursuant to 29 *Del. C.* § 10002, *et seq.*, 8 *Del. Admin. C.* § 1202-6.2.3, *et seq.*, and 26 *Del. Admin. C.* § 1001-1.11.2; and

WHEREAS, Delmarva’s Petition set forth the reasoning as to why certain information in Exhibits 2 and 3 should continue to be withheld as confidential (the “Exempted Information”); and

WHEREAS, on March 10, 2021, at its regularly scheduled meeting, the Commission provided interested parties an opportunity to be heard with respect to Delmarva’s Petition; and

WHEREAS, after review and consideration of the Petition and the parties’ arguments at its March 10, 2021 meeting, the Commission entered PSC Order No. 9755 (“Order 9755”),

memorializing its determination that Delmarva satisfied its burden of establishing confidentiality under FOIA, in accordance with 8 *Del. Admin. C.* § 1202-6.2.4; and

WHEREAS, Staff requests that the Commission enter this Order amending Order 9755 to include, in ordering Paragraph 3, 29 *Del. C.* 10002(ℓ)(2), which Delmarva included in both its Petition and oral argument; moreover, the Commission's March 10, 2021 determination relied, in part, on 29 *Del. C.* § 10002(ℓ)(2);

**NOW, THEREFORE, BY THE AFFIRMATIVE VOTE OF NOT FEWER
THAN THREE COMMISSIONERS, IT IS ORDERED THAT:**

1. The Commission hereby affirms its finding, after review and consideration of the Petition and the parties' arguments at the March 10, 2021 meeting, that Delmarva satisfied its burden of establishing confidentiality under FOIA, in accordance with 8 *Del. Admin. C.* § 1202-6.2.4.

2. The Commission hereby affirms its determination that the Petition sufficiently justifies a claim of confidentiality under Delaware law pursuant to 29 *Del. C.* § 10002, *et seq.*, 8 *Del. Admin. C.* § 1202-6.2.3, *et seq.*, and 26 *Del. Admin. C.* § 1001-1.11.2.

3. The Commission thus affirms its finding that Delmarva, by and through its Petition, met its burden in demonstrating that the Exempted Information in Exhibits 2 and 3 includes personnel, medical or pupil files, the disclosure of which would constitute an invasion of personal privacy, as well as trade secrets and financial or commercial information, which are confidential and therefore exempt from public disclosure in accordance with 29 *Del. C.* § 10002(ℓ)(1) and (2).

4. The Commission hereby affirms its finding that certain information in Exhibits 2 and 3 shall remain exempt from disclosure under Delaware law pursuant to 26 *Del. Admin. C.* § 1001-1.11.2.

5. The Commission hereby confirms that on March 19, 2021, in accordance with Order 9755 and 26 *Del. Admin. C.* § 1001-1.11.4, Delmarva timely filed one copy of Exhibits 2 and 3 without the Exempted Information, along with an indication that the confidential information had been deleted.

6. The Commission reserves jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Dallas Winslow, Chairman

Joann Conaway, Commissioner

Harold Gray, Commissioner

Manubhai “Mike” Karia, Commissioner

Kim F. Drexler, Commissioner

ATTEST:

Donna Nickerson, Secretary